1968

State of Utah, by and Through Its Road Commission v. General Oil Company, a Utah Corporation : Appellant's Brief

Utah Supreme Court

In the Supreme Court of the State of Utah

STATE OF UTAH, by and through its ROAD COMMISSION,
Plaintiff and Appellant,

vs.

GENERAL OIL COMPANY, a Utah corporation,
Defendant and Respondent.

CASE NO. 11178

APPELLANT'S BRIEF

Appeal from Judgment of the Third District Court,
Salt Lake County, State of Utah
The Honorable Leonard W. Elton, Judge

S. REX LEWIS, for
HOWARD AND LEWIS
120 East 300 North
Provo, Utah
Attorneys for Plaintiff and Appellant

ROBERT S. CAMPBELL, for
PARSONS, BEHLE, EVANS & LATIMER
520 Kearns Building
Salt Lake City, Utah
Attorneys for Defendant and Respondent

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BRIEF OF APPELLANT

STATEMENT OF THE NATURE OF THE CASE

This is an action in eminent domain, brought to condemn certain land for highway purposes.

DISPOSITION IN LOWER COURT

At the first trial of this action the jury returned a verdict of $4,147.52 as just compensation for the taking of defendant's property. Upon defendant's motion the trial court granted a new trial or, in the alternative, an additur of $15,000.00

Plaintiff declined the additur, and at the second trial the court entered judgment upon a verdict of the jury in the amount of $22,050.00, plus interest and costs.

RELIEF SOUGHT ON APPEAL

By this appeal plaintiff seeks reversal of the order of the trial court granting defendant's request for a new trial and directing that judgment be entered upon the verdict of the jury returned in the first trial of this action. In the alternative plaintiff requests a new trial.

STATEMENT OF FACTS

The parcel of land in question, consisting of 1.04 acres more or less, occupied at the time of taking (March 19, 1964, the date of service of summons herein) the northwest corner of the intersection of 1500 South Street and University Avenue, Provo City. The plaintiff sought to condemn the property in question in exercise of its right of eminent domain for the purpose of constructing an access route to interstate highway I-15 in the nature of an extension of South University Avenue.

At the time of taking (March 19, 1964), South University Avenue adjacent to the property was unpaved, and the character of land use in the area was primarily agricultural (R. 147). The general location of the proposed freeway access route, however, had been public knowledge since at least as early as February, 1958 (R. 118). In anticipation of construction of the access route as an extension of South University Avenue, the land on both sides of the road was rezoned September 21, 1959, from an agricultural classification to a "special highway service zone" (R. 150) in which the primary permitted uses are motels, filling stations and restaurants (R. 159).

Actual development of the area for these purposes did not begin until approximately two years after the tak-

ing, the access route being completed and opened for use in late fall, 1966 (R. 126).

At the first trial, four expert witnesses testified as to the value of the subject property. Defendant's witnesses testified to values of $25,800.00 and $24,010.00 respectively (Transcript 91, 163). Plaintiff's witnesses both testified to a value of $3,120.00 (Transcript 215, 23).

At the second trial defendant's witnesses testified to values of $23,700.00 and $24,010.00 (R. 247-49, 327-29). Plaintiff's witnesses again testified to a value of $3,120.00 (R. 384, 476).

Defendant's witnesses testified that at the time of taking the influence of the proposed development on the value of the subject property was direct and certain and accordingly based their evaluations in part on subsequent transactions in the area and on transactions on West Center Street involving service station sites (R. 219-47, 290-327).

Plaintiff's witnesses testified that at the time of taking the influence of the proposed development on the value was speculative and remote (R. 480-81) and accordingly based their estimates solely on transactions on South University occurring prior to the time of taking (R. 369-83, 448-75).

ARGUMENT

POINT I

THE COURT ERRED IN GRANTING A NEW TRIAL.

At the conclusion of the first trial, the court granted defendant's motion for a new trial on the ground that "the verdict of the jury on the issues of just compensation was, as a matter of law, inadequate . . . ."

Rule 59(a)(5) Utah Rules of Civil Procedure provides for the granting of a new trial on the ground of "excessive and inadequate damages, appearing to have been given under the influence of passion or prejudice."

The narrow limits within which a trial court is justified in disregarding the verdict of a jury have been stated as follows in Lund v. Phillips Petroleum Co., 10 Utah 2d 276, 351 P.2d 952 (1960):

> "We do not suggest that the jury is infallible nor that the court should abdicate its undoubted supervisory responsibility to see that justice is done by setting aside a verdict if it plainly appears that there has been a miscarriage of justice. But this is done with reluctance and only when it is plainly apparent that the jury has abused its prerogatives by refusing to accept uncontroverted credible evidence or otherwise ignoring or misapplying proven facts or established law. If the courts were ready to override jury verdicts whenever they disagreed with them, the right of trial by jury would be effectively abrogated and the trial may as well be to the court in the first place." 10 Utah 2d 282.

At the first trial of this action (as also the second) there was conflict in the evidence as to value between plaintiff's and defendant's witnesses. The unique function of the jury is to weigh such conflicting evidence and the credibility of the witnesses. The jury did so and concluded, apparently, that plaintiff's witnesses were to be believed and that defendant's witnesses were not to be believed.

In granting defendant's motion for a new trial, the court in effect substituted its judgment as to the credibility of the witnesses for that of the jury. The jury was

in possession of substantial evidence to sustain its verdict and the granting of a new trial was, in the light of this Court's language in Lund, an abuse of its discretion. As the Court stated in Wellman v. Noble, 12 Utah 2d 350, 366 P.2d 201 (1961):

> "The trial judge should not grant a new trial, merely because in his opinion the amount of the award was insufficient or excessive. Such action is warranted only when to the trial judge, 'it seems clear that the jury has misapplied or failed to take into account proven facts; or misunderstood or disregarded the law; or made findings clearly against the weight of the evidence.'" 12 Utah 2d 354.

In that case the trial court was affirmed in granting a new trial because "the jury had clearly been mistaken or misconceived the facts or the law on the amount of the damage . . . ." 12 Utah 2d 353.

Compare Porcupine Reservoir Co. v. Lloyd W. Keller Corp., 15 Utah 2d 318, 392 P.2d 620 (1964), a condemnation case, which this Court remanded for a new trial where

> "the trial court clearly indicated that in his opinion the jury verdict was less than the smallest amount which the jury could reasonably award under the evidence . . . ." 15 Utah 2d 320.

Our case is distinguishable from Porcupine Reservoir in that the verdict was within the limits of the evidence as to value. Applying the standard of that case to our facts, it is clear the trial court erred in granting the new trial.

POINT II

THE COURT ERRED IN ADMITTING EVIDENCE OF MARKET VALUES OF PROPERTIES AFFECTED BY THE IMPROVEMENT IN QUESTION.

It is a well established principle of law that:

> "As a general thing, under the greatly prevailing view, the owner of land taken in eminent domain is not entitled to recover an increase or enhancement in the value of his land due to the proposed improvement, although there is authority to the contrary." 27 Am. Jur. 2d 79, Eminent Domain § 283 (1966).

As a logical corollary of this principle, it is held that evidence of the market values of comparable properties, which values have been increased by the proposed improvement, is inadmissible. Thus State Highway Comm'n of South Dakota v. Lacey, 79 S.Dak. 451, 113 N.W.2d 50, (1962) held that where selling prices of other properties in the locality reflected an important enhancement of value because of the building of a highway for which the condemnee's property was taken, such selling prices were inadmissible to determine the award to the condemnee.

Similarly in Cole v. Boston Edison Co., 338 Mass. 661, 157 N.E.2d 209 (1959) the sales price of other property reflecting a substantial enhancement of value because of the turnpike project in question was held inadmissible on the question of the value of property taken for the project.

City of Houston v. Collins, 310 S.W. 2d 697 (Tex. 1958) held evidence as to sales subsequent to the taking inadmissible unless the price sought to be offered after the taking was not derived from the sale of any property benefited by the improvement in question.

In this case the trial court admitted defendant's evi-

dence both (a) as to the value of the subject property as affected by the improvement and (b) as to other property the value of which was influenced by the improvement.

Thus defendant's witnesses, Wilbur R. Harding and Werner Kiepe, both testified to the sale of certain property located at 900 South Street and University Avenue (R. 234-38, 320-22). The sale took place in September of 1965 (R. 235). Harding testified that the "motivating factor" in the sale was the prospect of traffic flow from the completion of the freeway (R. 235).

The same witness, Harding, testified to the value of that part of defendant's parcel not taken, using as the basis of his evaluation the capitalization of a lease between defendant and Holiday Inn entered into in the summer of 1965 (R. 238-44).

Under the authorities cited, the admission of this evidence was substantial and prejudicial error and plaintiff is entitled to a new trial.

CONCLUSION

It is clear that the trial court erred (1) in granting defendant's motion for a new trial and (2) in admitting evidence of values as affected by the improvement. Under these circumstances plaintiff is entitled to either (1) judgment on the verdict returned in the first trial or (2) a new trial.

Respectfully submitted,

S. REX LEWIS, for:
HOWARD AND LEWIS
120 East 300 North
Provo, Utah
Attorneys for Plaintiff-
Appellant

Mailed a copy of the foregoing, postage prepaid, to Robert S. Campbell, Parsons, Behle, Evans & Latimer, Attorneys for Defendant-Respondent, 520 Kearns Building, Salt Lake City, Utah, this_____day of June, 1968.

S. Rex Lewis